



against Plaintiffs Magnum Minerals, L.L.C., Magnum Blue Ribbon Feeds, Inc., Gearn Offshore, Inc., and Tim A. Gearn, as follows:

**PARTIES**

1. Defendant and Counterclaim Plaintiff Homeland Insurance Company of New York (“Homeland”) is a corporation incorporated in the state of New York, with its principal place of business in Minnesota.

2. Defendant and Counterclaim Plaintiff OneBeacon Insurance Group, LLC (misnamed by Plaintiffs as OneBeacon Insurance Group) is a corporation incorporated in Delaware with its principal place of business in Minnesota.

3. Defendant and Counterclaim Plaintiff OneBeacon America Insurance Company is a corporation incorporated in the state of Massachusetts, with its principal place of business in Minnesota.

4. Defendant and Counterclaim Plaintiff OneBeacon Insurance Company is a corporation incorporated in the State of Pennsylvania, with its principal place of business in Minnesota.

5. Defendant and Counterclaim Plaintiff Traders & General Insurance Company is a corporation incorporated in the State of Texas, with its principal place of business in Minnesota.

6. Plaintiff and Counterclaim Defendant Magnum Minerals, L.L.C. (“Minerals”) is a limited liability corporation incorporated in the State of Texas, with its principal place of business in Texas.

7. Plaintiff and Counterclaim Defendant Magnum Blue Ribbon Feeds, Inc. (“Blue Ribbon”) is a corporation incorporated in the State of Texas, with its principal place of business in Texas.

8. Plaintiff and Counterclaim Defendant Gearn Offshore, Inc. (“Gearn Offshore”) is a corporation incorporated in the State of Texas, with its principal place of business in Texas.

9. Plaintiff and Counterclaim Defendant Tim A. Gearn (“Gearn”) is an individual citizen of the State of Texas who resides in Hereford, Deaf Smith County, Texas.

### **JURISDICTION AND VENUE**

10. This Court has pendent jurisdiction under 28 U.S.C. § 1367 over this counterclaim. When a district court has original jurisdiction over some claims in a lawsuit, the court shall have “supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” 28 U.S.C. § 1367(a).

11. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the district and division of this Court embrace Deaf Smith County, Texas, the place where Plaintiffs filed their state-court complaint, and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in Deaf Smith County, Texas.

### **FACTS**

12. This case arises out of a tragic accident that occurred on February 2, 2011 (the “Accident”), in which Pedro Mejia (“Mejia”) was killed while in the employment of

Minerals, when a salt storage silo collapsed and crushed him. After the Accident, a wrongful death lawsuit was filed against Minerals (the “Underlying Suit”) by Consuelo Ayala (“Ayala”), Individually and as the Representative of the Estate of Pedro Mejia Beltran and as Next Friend and Natural Mother of Minors, EMA, JYMA and CBM. Ayala subsequently amended the Underlying Suit to add Blue Ribbon, Gearn Offshore, Tim A. Gearn, and others, as defendants.

13. Before the Accident, Homeland issued insurance policies to Gearn Offshore and Blue Ribbon (the “Policies”), which provided certain coverage due to their opting out of the Texas workers’ compensation system. However, the Policies only provide potential coverage when the injured person is employed by and receiving his pay on a regular basis from the insured named in the Policies; here, Gearn Offshore or Blue Ribbon. At the time of the Accident, Mejia was not employed by or receiving his pay on a regular basis from either Blue Ribbon or Gearn Offshore. Rather, it is uncontroverted that Mejia was solely employed by and receiving his pay on a regular basis only from Minerals. Homeland never issued an insurance policy to Minerals, who never applied for an insurance policy from Homeland. Minerals is not an insured named in either of the policies Homeland issued to Blue Ribbon and Gearn Offshore. Thus, Homeland very clearly owes no duty to defend any of the Plaintiffs in the Underlying Suit or to indemnify them for any liability that may be imposed against them in the Underlying Suit based upon the Accident.

14. Plaintiffs’ lawsuit against the OneBeacon Defendants is frivolous, groundless, and has no basis in law or fact. The OneBeacon Defendants therefore

seek to recover their attorney's fees and costs from the Plaintiffs/Counterclaim Defendants.

**COUNT ONE**

**RECOVERY OF ATTORNEY'S FEES  
PURSUANT TO THE COURT'S INHERENT AUTHORITY**

15. The OneBeacon Defendants incorporate the allegations in paragraphs 1-14 above.

16. Pursuant to the inherent authority possessed by this Court, the OneBeacon Defendants seek an award against the Plaintiffs/Counterclaim Defendants for the OneBeacon Defendants' reasonable attorney's fees incurred in defending this action because Plaintiffs/Counterclaim Defendants' claims are not well-grounded in fact, are not legally tenable, and were brought for an improper purpose, including to harass the OneBeacon Defendants, because the Plaintiffs' claims have been prosecuted vexatiously, wantonly, and for oppressive reasons, and because the Plaintiffs' actions in prosecuting this lawsuit have needlessly and without a reasonable basis increased the attorneys' fees and other expenses in this lawsuit.

**COUNT TWO**

**RECOVERY OF ATTORNEY'S FEES UNDER RULE 11**

17. The OneBeacon Defendants incorporate the allegations in paragraphs 1-17 above.

18. Pursuant to Rule 11 of the Federal Rules of Civil Procedure, the OneBeacon Defendants seek an award against the Plaintiffs/Counterclaim Defendants for the OneBeacon Defendants' reasonable attorneys' fees and all expenses incurred in this lawsuit because Plaintiffs/Counterclaim Defendants' claims are not well-grounded in

fact, are not legally tenable, and were brought for an improper purpose, including to harass the OneBeacon Defendants, because the Plaintiffs' claims have been prosecuted vexatiously, wantonly, and for oppressive reasons, and because the Plaintiffs' actions in prosecuting this lawsuit have needlessly and without a reasonable basis increased the attorneys' fees and other expenses in this lawsuit.

**PRAYER FOR RELIEF**

The OneBeacon Defendants request this Court to enter judgment in their favor against the Plaintiffs/Counterclaim Defendants on this counterclaim, including an award against the Plaintiffs/Counterclaim Defendants for the OneBeacon Defendants' attorney's fees and all costs of court, and to grant the OneBeacon Defendants such other and further relief to which they are justly entitled.

Respectfully submitted,

/s/ Michael Keeley

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served to all counsel listed below on this 13th day of June, 2013, via the Court's ECF System and/or certified mail, return receipt requested.

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